

(Published in The Wichita Eagle July 22, 2011)

ORDINANCE NO 49-036

AN ORDINANCE AMENDING SECTIONS 2.28.090 AND 2.28.110 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ADMINISTRATION OF THE WICHITA EMPLOYEES' RETIREMENT SYSTEM, AND REPEALING THE ORIGINALS OF SAID SECTIONS OF THE CODE OF THE CITY OF WICHITA.

WHEREAS, the City's Pension Office is in the process of seeking updated determination letters from the Internal Revenue Service on the tax qualification of the benefit plans comprising the Wichita Employees' Retirement System; and,

WHEREAS, the Internal Revenue Service, as a condition of granting favorable determination letters, now requires that the plan provisions be amended to set forth an affirmative statement concerning non-forfeitability of vested benefits upon attainment of normal retirement age, which changes have been approved and recommended by the Board of Trustees of the Wichita Employees' Retirement System; and,

WHEREAS, the Governing Body desires the investment committee to have the ability to invest in investment products that are offered through commingled group trust investment vehicles, and applicable revenue rulings (most recently, Revenue Ruling 2011-1), requiring that tax qualified plans investing through such vehicles must adopt the group trust(s) as part of the investing retiree benefit plan;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 2.28.090 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.090 Investment Authority.

(a) Except as provided in subsection (c), the board shall invest and reinvest any portion of the fund not needed for immediate benefit payments through a unitized joint investment fund comprised of assets of the Wichita employees' and police and fire retirement systems. The joint investment fund shall be invested by an investment committee comprised of members from both boards and a city manager's designee. The executive secretary shall be an ex officio, non-voting member of the investment committee. To achieve the investment objective which is to make the moneys as productive as possible, certain standards and limitations (based on cost at time of purchase) are set forth in this section as follows:

(1) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed and disposed of as investments of the fund every kind of investment which people of prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account;

- (2) The proportion of the funds invested in corporate, preferred and common stocks shall not exceed seventy percent;
- (3) The proportion of the fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent;
- (4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;
- (5) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company or a bank;
- (6) Other investments separately managed by a qualified investment counselor, an insurance company or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;
- (7) The board shall impose whatever limitations are deemed appropriate under its investment policy statement²;
- (8) Notwithstanding any contrary provision in Chapter 2.28 of the Code of the City of Wichita, assets of the Fund may be transferred to a group trust meeting the requirements of Revenue Ruling 2011-1 that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets of pension, profit-sharing and stock bonus trusts or custodial accounts qualifying under Section 401(a) of the Internal Revenue Code that are exempt

under Section 501(a) of such Code; individual retirement accounts that are exempt under Section 408(e) of the Internal Revenue Code; eligible governmental plan trusts or custodial accounts under Section 457(b) of the Internal Revenue Code that are exempt under Section 457(g) of such Code; custodial accounts under Section 403(b)(7) of the Internal Revenue Code; retirement income accounts under Section 403(b)(9) of the Internal Revenue Code; and governmental plans under Section 401(a)(24) of the Internal Revenue Code. Following the investment committee's selection of such a group trust for investment, and upon the transfer of assets of the Fund to such group trust, the group trust shall be deemed adopted as a part of the retirement plan for the duration of such investment.

For purposes of valuation, the value of the interest maintained by the plan in such group trust shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

- (b) Nothing in this chapter, however, shall be construed so as to give the board at any time authority to invest directly or indirectly in any:
 - (1) Real estate, except in pooled arrangement such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investments shall not exceed ten percent (10%) of the Fund;
 - (2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered advisor or a bank. The

amount of such investment shall not exceed ten percent (10%) of the Fund;

- (3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;
- (4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;
- (5) Oil and gas leases or royalties; or
- (6) Commodities (including but not limited to wheat, gold or gasoline, or financial futures); provided, however, that the restriction on investment contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

- (c) The board shall not be responsible for investing or reinvesting any portion of an employee's vested account for which an employee has assumed self-direction responsibility of the investing and reinvesting of such an employees' vested account as provided for in Section 2.28.060 of this chapter.

SECTION 2. Section 2.28.110 of the Code of the City of Wichita, Kansas is amended to read as follows:

Sec. 2.28.110. Eligibility for defined benefit retirement on account of age and service.

- (a) *For employees under Plan No. 1:*

(1) For purposes of compliance with the Internal Revenue Code and related guidance, upon attaining the age of sixty years, and having at least seven years of service (whichever is later), an employee has a nonforfeitable right to his or her normal retirement benefit, which is the benefit calculated under Section 2.28.120(a)(1). The retirement benefit is only payable upon the employee's retirement. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

(2) An employee who has completed at least thirty years of service shall be eligible to receive a retirement benefit regardless of age. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(3) An employee who has completed at least seven years of service and desires to retire voluntarily after having attained the age of fifty-five years and who has not yet attained the age of sixty years shall be eligible to receive a reduced retirement benefit. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(4) An employee who has completed at least seven years of service may, upon terminating employment before age sixty, receive a refund of his or her contributions with interest at five percent per year compounded monthly. Such employee may elect to leave his or her contribution in the fund and such employee shall be eligible for a retirement benefit at such time as the employee satisfies the age requirements of subsections (a)(1) or (3) of this section. The amount of such benefit shall be calculated as provided in Section 2.28.120 and Section 2.28.140.

(b) *For employees under Plan No. 2:*

(1) For purposes of compliance with the Internal Revenue Code and related guidance, upon attaining the age of sixty-two years, and having at least seven years of service (whichever is later), an employee has a nonforfeitable right to his or her normal retirement benefit, which is the benefit calculated under Section 2.28.120(b)(1). The retirement benefit is only payable upon the employee's retirement. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

(2) An employee who has completed at least seven years of service and desires to retire voluntarily after having attained the age of fifty-five years and who has not yet attained the age of sixty-two years shall be eligible to receive a reduced retirement benefit. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(3) An employee who has completed at least seven years of service may, upon terminating employment before age sixty-two, receive a refund of his or her contributions with interest at five percent per year compounded monthly. Such employee may elect to leave his or her contribution in the fund and such employee shall be eligible for a retirement benefit at such time as the employee satisfies the age requirements of subsections (1) or (2) of this section. The amount of such benefit shall be calculated as provided in Section 2.28.120 and Section 2.28.140.

SECTION 3. The prior versions of Sections 2.28.090 and 2.28.110 of the Code of the City of Wichita, Kansas are hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, and signed by the Mayor
this 19th day of July, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law